

August 9, 2019

By Email

Peter Wright
Assistant Administrator
Office of Land and Emergency Management
Environmental Protection Agency Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW, Mail Code 5101T
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Re: Docket number EPA-HQ-OLEM-2018-0524: Request for translation of proposed rule and associated written documents and renewed request for a public hearing in Guayama, Puerto Rico and an extension of the comment period

Dear Assistant Administrator Wright:

We write to request that the Environmental Protection Agency (“EPA”) provide impacted and injured communities in Puerto Rico the opportunity to exercise their right of public participation in the rulemaking process for the proposed rule that lifts protections for toxic coal ash waste piles and the placement of unencapsulated coal ash by providing the immediate translation of critical documents in Spanish and by providing a public hearing in Guayama, Puerto Rico.

On July 29, 2019, the Administrator of the U.S. Environmental Protection Agency (“EPA”) signed the proposed rule, *Enhancing Public Access to Information and Reconsideration of Beneficial Use Criteria and Piles* (“proposed rule”), docket number EPA-HQ-OLEM-2018-0524. On the same day, EPA published a pre-publication version of the proposed rule on its website.

We write to request that the EPA provide Spanish translations of the proposed rule, as well as the materials related to the proposed rule that EPA will shortly place in the docket. We request that EPA provide these translations *prior to starting the comment period* and continue to provide English into Spanish and vice-versa translations for comments and EPA-published documents in and related to the docket. We further request that the EPA provide at least one public hearing in Guayama, Puerto Rico, as requested in our letter dated July 15, 2019. (Attached to this letter as Attachment 1). EPA has indicated in the proposed rule that it intends to hold only one hearing, which will take place in the Washington, D.C. metropolitan area on October 2, 2019.

As explained in detail in our letter of July 15, 2019, this rulemaking is of significant and particular importance to the people of Guayama, Puerto Rico because of the immense coal ash waste pile located in that community at the AES-PR Guayama Power Plant. The nine-story coal ash waste pile has caused substantial air and water pollution that has harmed the health of the nearby community. EPA’s proposed rule will exempt the toxic coal ash pile from protective

requirements that currently require dust control, frequent inspections, groundwater monitoring, and cleanup of contaminated groundwater, among other critical safeguards that protect the health and environment of Puerto Rico residents.

The rulemaking is also of particular and significant importance to the people of southeastern Puerto Rico due to the extensive use of coal ash as fill in that region of the island. Failure to adequately cover such fill areas has led to exposure to toxic chemicals from direct contact with the waste and fugitive dust.

From approximately 2004 to 2012, over two million tons of the AES coal ash waste called *Agremax* was used as fill in various projects in Puerto Rico, including housing, commercial developments and road projects. The vast majority of construction sites where AES CCRs were disposed of are located in proximity to the AES coal combustion plant and over the South Coast Aquifer, the sole source of potable water for tens of thousands of people. The Guayama region, an environmental justice community according to the Toxic Release Inventory, is the most contaminated region in Puerto Rico. The Guayama region was known as “the hunger route”, and has one of the highest percentages of people of African descent in Puerto Rico. High poverty rates, unemployment and school dropout rates characterize the Guayama region. The AES disposal of CCRs in the Guayama region in proximity to the plant and the AES CCR waste pile impose disproportionate public health risks to this environmental justice community. The AES plant is among the disproportionate number of electric utility plants with high surrounding child population percentages.

Puerto Rican citizens are United States citizens and, although the official languages are Spanish and English, Spanish is the primary language with an estimated 80-90% of the population speaking Spanish as a first language. Much of the impacted population in southeastern Puerto Rico speak and read solely Spanish.

The Administrative Procedure Act (“APA”) sets forth standards of due process, transparency and accountability. 5 U.S.C. § 551 et seq (1946). Meaningful pre-publication and publication of the notice of proposed rulemaking has not occurred when a significant portion of people impacted by the rule have not actually received such notice due to an inability to read or understand the language. Consequently a public notice-and-comment period would not serve the purposes of the APA if the public actually has not been informed nor had the ability to comment, or if the agency cannot take into account comments written in Spanish.

Further, Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” (“EO 13166”), issued pursuant to Title VI of the Civil Rights Act of 1964, requires federal agencies to develop and implement plans to improve and provide meaningful access to federally-conducted programs and activities by eligible Limited English Proficiency (“LEP”) persons. EPA issued order 1000.32, “Compliance with Executive Order 13166” as required by EO 13166, stating EPA’s policy that “it is the responsibility of EPA to take reasonable steps to ensure that communications between the EPA and the LEP individual are not impaired as a result of the individual’s limited English proficiency.” EPA recognizes in order 1000.32 that “[f]ailure to provide timely language assistance services may result in a denial of

meaningful access to EPA's programs, activities, and services that are accessible to non-LEP individuals.”

Request for Translation of Written Materials into Spanish

We request Spanish translations of all information on the EPA website relating to the proposed rule prior to starting the comment period including:

- (1) The EPA website page entitled “Disposal of Coal Combustion Residuals from Electric Utilities Rulemakings.”¹
- (2) The July 29, 2019 pre-publication notice of proposed changes to amend the 2015 Coal Combustions Residual Rule.²

We further request ongoing translations and publication on the EPA website of the following written materials:

- (1) The notice of proposed rulemaking including the entire proposed rule into Spanish. EPA notes in the pre-publication version that the Internet copy of the proposal is not the official version of this action. Consequently, we request translation of the Federal Register publication, which will be on the Government Printing Office's website.
- (2) After any and all hearings, concurrent with publishing verbatim transcripts and written statements in the docket, both English into Spanish and vice-versa translation of the transcripts and written statements.
- (3) Translation of comments as submitted, both English into Spanish and vice versa, so that the agency can take into account the comments submitted in both languages.

Requested Public Hearing in Guayama

We request, at minimum, one public hearing in Guayama, Puerto Rico in both English and Spanish in order to provide a meaningful opportunity for residents of Puerto Rico to participate in development of the proposed rule.

Only one public hearing located in the Washington, D.C. metropolitan area will not provide an opportunity for meaningful public participation. In addition to being predominantly Spanish-speaking, the community in Guayama has a high rate of poverty and traveling to Washington, D.C. for a hearing would be prohibitive. Because contaminated water and sediments has harmed the health, environment and economic well-being of communities in southeastern Puerto Rico, in and around Guayama, we ask for a public hearing where such impacted residents can voice their direct experiences and raise concerns about how they will be harmed by the new rulemaking.

¹ Shown at <https://www.epa.gov/coalash/coal-ash-rule>

² Shown at https://www.epa.gov/sites/production/files/2019-07/documents/pre_publication_version_of_proposed_changes_to_the_coal_combustion_residuals_regulations_july_29_2019_0.pdf.

EPA has the responsibility to hear the testimony of people particularly and significantly impacted by pollution that is the subject of its proposed rule, particularly when their proposal will lift safeguards on the polluters responsible for the harm.

In contrast, the EPA in 2010 held seven public hearings near communities most impacted by coal ash disposal after publication of its proposed Coal Combustion Residuals Rule. Because EPA understood that coal ash contamination occurs nationwide, these hearings allowed impacted communities to voice their concerns. Further, in Puerto Rico, coal ash disproportionately impacts low-income and minority communities. A hearing in English in the Washington, D.C. area would essentially silence thousands of impacted Americans.

In sum, we ask that EPA take three reasonable and necessary steps to ensure that the people most impacted by this proposed rule can participate in the rulemaking process:

- 1) We request that EPA publish Spanish translations of the requested documents and that the agency continue to translate vital documents during the notice-and-comment period;
- 2) We ask that the EPA delay the commencement of the comment period until after, at minimum, the proposed rule and supporting documents in the docket have been translated into Spanish. Correspondingly, we reiterate our request for a 120-day extension of the comment period (*See* Attachment 1); and
- 3) We request that the EPA hold a public hearing on the proposed rule in English and Spanish in Guayama, Puerto Rico.

Thank you in advance for your consideration of these vital concerns. Should you wish to discuss this request, please contact Lisa Evans, Earthjustice, levans@earthjustice.org, 781-631-4119.

Respectfully submitted,

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